IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

MFA.No. 40 of 2003()

OPMV.836/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
.....

APPELLANT: APPLICANT:

SREEJITH M., ABHILASH BHAVAN,
XXI/57, PONMARA NAGAR, NEDUMANGAD.
(NOW MAJOR).

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENTS: RESPONDENTS 1 TO 3:
----

1. M. GOPAKUMAR, ASHA NIKETH,
MANNAMOOLA, PEROORKADA,
THIRUVANANTHAPURAM.

2. K. MANOJKUMAR, KUZHIVILA PUTHEN
VEEDU, KALAKODE, VELLAUD, NEDUMANGAD.

3. THE DIVISIONAL MANAGER,
UNITED INIDA INSURANCE CO.LTD.,
I.M.S. COMPOUND, THIRUVANANTHAPURAM.

BY ADV. SRI.SIBY MATHEW FOR R3
SRI.PHILIP J.VETTICKATTU
SRI.G.HARIHARAN FOR R1 AND R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.40 OF 2003 ()

Dated this the 16th day of November, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant at the age of 13 suffered serious injuries in a motor accident due to the negligent driving of the vehicle insured by the 3rd respondent Insurance company. He claimed an amount of Rs.5,00,000/- as compensation. Though tribunal found that accident occurred due to the negligence of the driver of the offending vehicle insured by the 3rd respondent Insurance company, only Rs.1,28,000/- was awarded by the tribunal. Accident occurred on 5.5.1997 and he was treated as inpatient for about three weeks at the Medical College, Thiruvananthapuram. Ext.A7 discharge summary shows the following disabilities:

> 1. Acute subdural haemorrhage overlying the cerebellar hemisphere on Rt.side with mild mass effect.

2. Focal haemorrhagic contusion in the right cerebellar hemisphere.

3. Generalised cerebral Oedema.

4. Multiple air pockets in the basal cisterns and in one or two foice of brain parenchyma and in frontal horn of Lt. lateral ventricle.

5. Linear fracture at posterior parcital region Rt.side.

6. Linear fracture at lateral bony orbital wall on Lt. side.

7. Linear fracture at Medical Orbital wall posteriorly on Lt. side.

8. Linear fracture at posterior angle left maxillary sinus with separation of pleregoid plates.

9. Diastasis of Tempero occipital suture Rt. side.

10. Extra calvarial soft tissue swelling on Rt. occipets.

11. Rt.Pupil dialated and not reacting to light.

12. Direct light reflex absent Rt. side.

13. Corneal and conjunctival reflex absent Rt. side.

14. Convergent squint due to Rt. Lat rectos palsy.

15. Minimal LMN facial Rt.

16. Hyperacussis Rt.

17. Maxillary and Ophthalmic divisions of Vth N Paralysis.

The Opthalmic consultation was conducted on

29.5.1997.

The certificates produced show that his one eye sight was completely lost apart from other disabilities. His permanent visual disability was certified as 50% by Medical Board (Ext.A10 certificate) and neurological disability certified by Ext.A11 was 25%. According to the claimant the Medical Board assessed only opthalmic disability and considering neurological disability as certified in Ext.A11, total disability is 75%. A doctor of the Medical Board was examined as PW2 and doctor who gave Ext.A11 was examined as PW3. Disability certificates were properly produced. But tribunal has awarded compensation for 25% disability without any valid reasons. Since medical Board has given certificate, as found 50% disability, at least that should have been accepted by the tribunal. Therefore compensation ought have been awarded for 50% disability and not for 25% disability. Tribunal has taken Rs.2,000/- as the monthly income. He was a non-earning person and he was only a student though evidence was adduced to show that he was a brilliant student. According to him, he lost the entire hopes in his life due to the injuries. But since

he is only a student, only notional income as per the Second Schedule can be taken, that is, Rs.1,250/- per month (Rs.15,000/- per year) for the purpose of assessing compensation. If that be so, taking 2nd schedule as a guideline, compensation payable will be Rs.15,000 x 15 x $^{50}/_{100}$ = Rs.1,12,500/-. Tribunal has granted only Rs.90,000/- for disability and loss of earning power. Hence additional compensation payable will be Rs.22,500/-. We are of the opinion that reasonable compensation was granted under other heads. The above additional amount of Rs.22,500/- should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount. On deposit of the amount appellant is allowed to withdraw the amount. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.40 OF 2003 ()

J U D G M E N T

16th November, 2007